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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re B.G., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B222187
(Super. Ct. No. J1241369)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

YVONNE C.,

Defendant and Appellant.

Yvonne C., the paternal aunt of B.G., appeals orders of the juvenile court denying her modification petition concerning placement and adoption of B.G., among other things. (§ 388.)¹ We affirm.

FACTS AND PROCEDURAL HISTORY

In October 2006, Samantha V. (Mother) gave birth to B.G. in Florida. W.G. (Father), a Florida resident, was the biological father of the child. In September and October 2007, the West Palm Beach County Department of Children & Families investigated and found true allegations that Mother and Father were abusing prescription

¹ All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

and illegal drugs and were unable to care for B.G. and Mother's two older children. On October 18, 2007, Mother overdosed on prescription drugs and cocaine. She stated that she "wanted to die because her husband was arrested for weapon possession."

On October 31, 2007, B.G.'s maternal grandmother (Grandmother) sought temporary custody of B.G. during Mother's treatment in a residential drug treatment facility in Tucson, Arizona. The Palm Beach County court granted Grandmother temporary custody and temporary full decision making regarding B.G. Grandmother and B.G. then moved to Tucson to live near Mother.

On August 11, 2008, Father died from a drug overdose. His surviving family includes his two sisters and mother, all residing in Florida. Yvonne C. is one of Father's sisters and therefore B.G.'s aunt (Aunt).

Several months later, Mother, Grandmother, and B.G. moved to Santa Barbara, California, where Grandmother's half-sister resides. On November 29, 2008, Grandmother overdosed on prescription drugs and was admitted to a hospital. Santa Barbara County Child Welfare Services (CWS) learned of the hospitalization, investigated, and later counseled Grandmother.

On January 12, 2009, Grandmother drove her vehicle into the front wall of B.G.'s preschool building. B.G. was in the vehicle, but was not injured. A sheriff's deputy arrested Grandmother for driving under the influence of medications. On January 13, 2009, Aunt telephoned CWS and requested that she or her mother (B.G.'s paternal grandmother) be considered for placement. CWS informed Aunt that placement in Florida would be unlikely if family reunification services were offered to Grandmother or Mother in Santa Barbara.

On January 14, 2009, CWS filed a dependency petition in juvenile court pursuant to section 300, subdivision (b). CWS alleged that Grandmother was the temporary guardian of B.G., who was at risk of harm due to Grandmother's abuse of prescription medications. On January 15, 2009, the court ordered B.G. detained in the custody and care of CWS. Aunt and the paternal grandmother traveled to California and attended the detention hearing.

On February 11, 2009, the juvenile court held a hearing at which neither Mother nor Grandmother appeared, but were represented by counsel. A CWS social worker requested an expedited placement evaluation of B.G.'s Florida relatives because Mother had stated that she intended to return to Florida. Mother's attorney informed the court, however, that Mother intended to remain in Santa Barbara and not return to Florida. For that reason, the court did not order an expedited evaluation.

At the hearing, CWS and Grandmother's attorney informed the juvenile court that Grandmother was not a guardian of B.G., but a temporary custodian pursuant to the Palm Beach County court order. At a hearing a week later, the court referred to CWS reports and stated that Grandmother's custody was "simply temporary placement." Mother's attorney also reiterated, in Mother's presence, that Mother did not intend to return to Florida.

Due to the determination that Grandmother was not the guardian of B.G., CWS filed an amended dependency petition on March 10, 2009, against Mother. CWS alleged that B.G. was at risk of serious harm due to Mother's medical condition, substance abuse, mental illness, and suicide attempts. On April 22, 2009, Mother submitted to jurisdiction and disposition. The juvenile court sustained the allegations of the original and amended dependency petitions, continued B.G. in foster care, and ordered CWS to provide family reunification services to Mother.

The family reunification services plan required Mother to be assessed for substance abuse and participate in recommended treatment, participate in and complete parent education, and participate in mental health counseling.

At the July 8, 2009, interim review hearing, CWS described Mother's progress in her services plan as "limited." The interim report stated that Mother had been found unconscious in her vehicle with the motor running, and that she recently displayed suicide ideation following the suicide of her brother. Mother had met with a mental health worker from the local hospice concerning her brother's death. The court ordered continued family reunification services to Mother and set a review hearing.

On July 26, 2009, Mother died from an overdose of prescription drugs. The following day, CWS filed a petition to modify the juvenile court's order regarding provision of reunification services. CWS also requested the setting of a permanent plan hearing pursuant to section 366.26. On July 29, 2009, the court granted the modification petition, permitted Mother's attorney to represent Aunt and the Florida relatives, and ordered an expedited evaluation of Aunt as placement for B.G.

The Foster-Adoptive Family

On February 10, 2009, CWS had placed B.G. with Mr. and Mrs. B., as foster parents and potential adoptive parents. Following Mother's death, the B. family filed a request with the juvenile court to be designated prospective adoptive parents and de facto parents. On September 23, 2009, the court granted Mr. and Mrs. B. de facto parent status and continued their request for prospective adoptive parent status to permit review of documents. The court also continued B.G.'s placement in their custody and care.

Aunt's Modification Petition

On October 8, 2009, Aunt filed a modification petition with the juvenile court, seeking placement of B.G. with her in Florida. The petition alleged as changed circumstances Mother's death, the need for permanent planning, and Aunt's recent positive evaluation as a placement home. Aunt sought to be made a party to the proceedings, to be immediately appointed guardian of B.G., and to be designated the prospective adoptive parent. Aunt stated that she and her relatives had a close family relationship with B.G. until Mother moved from Florida in October 2008.

The juvenile court denied Aunt's request to be made a party to the proceedings. Thereafter Aunt filed a motion to intervene pursuant to Code of Civil Procedure section 387, subdivision (a). The court later denied this motion also.

On October 28, 2009, the juvenile court terminated Mother's parental rights and determined that adoption was the preferred permanent plan for B.G. The court received a report of the Court Appointed Special Advocate that described B.G. as happy in the B. home and as bonded to them as parents. The report also related that the paternal

relatives blamed Mother for Father's death and that a different aunt and the entire family would care for B.G. The report opined that "tremendous emotional consequences" to B.G. would ensue from removing her from the B. family and returning her to Florida to live with the paternal relatives.

On January 29, 2010, the juvenile court considered and denied Aunt's modification petition as facially insufficient. Prior to ruling, the court heard lengthy argument from the parties and Aunt, and heard Aunt's offer of proof. The court also granted the B. family's petition for prospective adoptive parent designation.

Aunt appeals and contends that the juvenile court erred by: 1) denying her modification petition without holding an evidentiary hearing; and 2) vacating its prior order granting her motion to intervene without providing her notice and an opportunity to be heard.

DISCUSSION

I.

Aunt argues that the juvenile court abused its discretion by denying her modification petition without an evidentiary hearing. She points out that the court set the matter as contested, but later found the modification petition facially insufficient and denied it without a hearing. Aunt asserts that the petition established changed circumstances and that B.G.'s best interests would be promoted by a change in placement and custody. She adds that the court improperly deferred to CWS's placement decision. Aunt contends that CWS abused its discretion by failing to evaluate the paternal relatives immediately for placement. (§ 361.3; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033 [application of the "relative placement preference" places the relative "at the head of the line when the court is determining which placement is in the child's best interests"].) She adds that the Legislative intent is to strengthen family ties. (§ 16000, subd. (a); Fam. Code, § 8714.5.)

We reject Aunt's contentions for several reasons.

First, Aunt's modification petition did not make a prima facie showing of changed circumstances or new evidence, and that a proposed change would promote the

best interests of B.G. (§ 388, subd. (c); *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) The juvenile court was not required to order a hearing absent such showing. (*Anthony W.*, at p. 250.)

Viewed most favorably to Aunt, her petition alleged that B.G.'s best interests would be served by placement with paternal family members who would provide information regarding B.G.'s parents. Aunt's petition did not allege evidence that continuing B.G.'s placement with the B. family, with whom she had bonded and enjoyed a parent-child relationship, was not in her best interests. The petition also did not allege changed circumstances. Information regarding Mother's death and the approval of Aunt's home as possible placement was known to the juvenile court and the parties. The court did not abuse its discretion by summarily denying the modification petition. (*In re Anthony W.*, *supra*, 87 Cal.App.4th 246, 250 [standard of review].)

Second, the "relative preference" of section 361.3 does not apply to adoption placements. The statute gives preferential consideration to a request by a relative of a child removed from parental custody for placement of that child. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855 ["There is no relative placement preference for adoption"].) The preference applies at the dispositional hearing and thereafter whenever a new placement must be made. (§ 361.3, subd. (d); *Lauren R.*, at p. 854.) Here CWS placed B.G. with Santa Barbara foster parents to assist and promote Mother's completion of family reunification services. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798 [placement of minor during reunification services may not frustrate parent's reunification efforts].) Thereafter, following Mother's death, the necessity of a new placement did not arise.

Evidence here established that B.G. was thriving in the B. home and was bonded to her foster parents, with whom she had lived for nearly a year. "[R]egardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.)

II.

Aunt argues that the juvenile court erred by granting her motion to intervene and then vacating that order without providing her notice and an opportunity to be heard.

The juvenile court did not err by denying Aunt the right to intervene. Section 388, subdivision (a) defines her interests in the dependency proceeding: "Any . . . person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court" A further right to intervene would render section 388 superfluous and would be at odds with the confidentiality of dependency proceedings. Moreover, our review of the record reflects that the juvenile court judge misspoke when he stated, "I'm going to allow the intervention. I'm going to allow the access to the file." As he stated in a later hearing, "I was speaking of access to the [record of the proceedings], not intervention."

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Thomas R. Adams, Judge
Superior Court County of Santa Barbara

Reisman & Reisman, Daniel A. Reisman, Erin Reisman for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Gustavo E. Lavayen, Chief Deputy, for Plaintiff and Respondent.